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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,498	08/16/2001	Emmanuel Lazaridis	114205.204	2508

21901 7590 02/09/2005

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EXAMINER

MARSCHER, ARDIN H

ART UNIT PAPER NUMBER

1631

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/913,498	Applicant(s) LAZARIDIS, EMMANUEL	
	Examiner Ardin Marschel	Art Unit 1631	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached further explanation. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: 17.
- Claim(s) objected to: 2,5,12 and 16.
- Claim(s) rejected: 1-6,11-15 and 18-24.
- Claim(s) withdrawn from consideration: 7-10.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: of reasons of record as further explained as attached..
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: Exr. Int. Sum. for 2/7/05.

DETAILED ACTION

Further explanation of item # 3 on the enclosed Advisory action:

The proposed amendment, filed 11/12/04, would introduce new issues of NEW MATTER as well as new limitations that would require further consideration and/or search. Regarding NEW MATTER, proposed instant claim 1, line 13, cites each gene as being identified via at least one latent class. Applicant has not pointed to written support as filed for a latent class being identified regarding each gene as now cited in the claim. Consideration of the instant disclosure as filed has also failed to reveal written basis as filed for this gene identification practice. Regarding raising new issues, the proposed claim amending in claim 1 is directed to a medical condition of a host suspected of having the medical condition wherein at least one "gene" is identified. The previously pending claims lack any such "gene" identification relating to a medical condition. It is acknowledged that claim 4 cites genes linked to a cellular phenotype but without this practice being described as a medical condition of a host nor that a suspecting of having a medical condition is under examination as now proposed for instant claim 1.

Further explanation of item # 11 on the enclosed Advisory action:

The rejections and objections of record in the Final action, mailed 8/11/04, are maintained and reiterated from said final action due to the above noted non-entry of the amendment.

Applicant specifically argues that the parameter "K" is definite in claim 2 due to its defining the total number of dimensions in the multidimensional space. In response, the mathematical meaning of "K" is clear but not what the metes and bounds of this total number are. The claim remains unclear as to what defines the value of "K".

Applicants also argue the NEW MATTER rejection regarding instant claim 1, line 4, part (a), set forth in the previous office action, mailed 8/11/04, by stating that "the objects" is still part of the limitation and that "related to the objects" does not include observations that are not "on the objects" nor unrelated to "the objects". In response, the allegation that "related to the objects" does not include observations that are not "on the objects" is an allegation without factual support, because the word "on" in the phrase "on the objects" is reasonably interpreted as requiring some type of direct observations "on the objects" which now include indirect observations via some type of undisclosed indirect non-"on" the objects embodiments. This broadening therefore still is reasonably deemed NEW MATTER.

If applicant's amendments had been entered, the rejections under 35 USC 101 and 102(b) and objection of claim 16 would have been overcome.

Claim 17 is allowable.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (571) 273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., Supervisory Patent Examiner, whose telephone number is (571) 272-0718. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (571) 272-0549.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 7, 2005

Ardin H. Marschel 2/7/05
ARDIN H. MARSCHEL
PRIMARY EXAMINER